1942 **K** File No. O Munis. Govt. Tax/42

LEGAL DEPARTMENT

A BRANCH

Subject:—

Opinions re Municipal tax. to be paid by Govt. on Govt Buildings

---

File No. O. Munis - Govt. Tax/42

Ltd. Sec. Stp. 21 A

280-A

CONTENTS.

Legal Department Volume No. 0.Munis.Govt.Tax/1942.

Sr. No.	Compilation No.	Subject.	Pages.
		Opinions re. Municipal Tax to be paid by Govt. on Govt. Buildings.	
1.	R.I.No.1561, dt. 12-2-42. O.No.3477, dt. 23-4-42.	The Railways (Local Authorities taxation) Act, 1941 -- Whether section 3(2) of this Act ousts the jurisdiction of the Commissioner to determine the sum payable by Rlyw. administrations to Local authorities as taxes.	1-3 5-7.

MRP.
27/4/56.

Evle: — DPP
30/4 30-4-56

R.I.No.1561,dt. 12-2-42.

Submitted.

The Govt. of India have by their Resolution in the P.W.D., No.434 R.T., dated the 17th August 1894, appointed the Commissioners in charge of Divisions, under sub-sec.(2) of sec.135 of the Indian Railways Act, 1890, to determine the sum payable by railway administrations to local authorities as taxes. Sec.135 is not applicable to State-owned railways because of the provisions of sec.154 of the Govt. of India Act, 1935, save in so far as any Federal law otherwise provides. Under the proviso to sec.154 of the Govt. of India Act taxes payable by virtue of notifications issued under sec.135 of the Railways Act before 1st April 1937 continue to be payable until a federal law otherwise provides. Sub-sec.(1) of sec.3 of the Railway (Local Authorities Taxation) Act, 1941, declares the liabilities of State-owned railways to taxation by local authorities. Sub-section (2) provides that such a railway administration shall be liable to pay either the tax mentioned in the notification under sub-section (1) or in lieu thereof such sum, if any, as a person appointed in this behalf by the Central Govt. may, from time to time, determine to be fair and reasonable. As the person so appointed shall be a person who is or has been a Judge of a High Court or a District Judge, the Commissioner, N.D. raises a doubt whether he can now exercise jurisdiction under sec.135(2) of the Railways Act under the orders of 1894. The R.I.A. is requested to

to advise on this point.

MRP.
27/4/56.

2. X X X X X X X

Sd. D.W.D.
25/2/42

A.S.

Office of the R.L.A.

In respect of the tax payable by the Railway Administration to a local authority under the provisions of the Railway (Local Authorities Taxation) Act, 1941, it is provided by section 3(2) of that Act that in lieu of the tax such sum may be paid as may be fixed by a person, being a District Judge or High Court Judge, appointed in this behalf. In respect of the tax payable by the Railway Administration to a local authority under the provisions of the Railways Act, 1890 it is provided by section 135 of that Act that in lieu of the tax such sum may be paid as is fixed by an officer appointed in this behalf, the officer so appointed at present being the Commissioner. The question now is whether section 3(2) of the Railways (Local Authorities Taxation) Act ousts the jurisdiction of the Commissioner in all cases. The answer is in the negative.

2. Section 135 of the Railways Act has not been repealed either expressly or by implication. On the contrary, that section and notifications under it continue to apply to all railways other than the State owned Railways. The Railways (Local Authorities Taxation) Act, 1941 has, in fact, no application to railways other than State owned Railways. As regards State-owned Railways also section 135 continues to have application, but with a force limited in two directions under the Government of India Act, 1935; firstly, the principal provision of section 154 of the Government of India Act precludes the levy of any new or higher tax on the railway by a local authority except when a Federal law otherwise provides; and secondly, section 143(2) and the proviso to section 154 of the Government of India Act preclude the exemption, whether partial or complete, of the railway from any tax continued to be levied by a local authority 'except when a Federal law otherwise provides'. The result is that in respect of State-owned Railways a Federal law alone can —

(a) remove or reduce the liability to an existing tax

and

(b) add or increase the liability to a fresh or higher tax imposed by a local authority. The Railways (Local Authorities Taxation) Act is such a Federal law. In other words, it enables fresh or increased taxation by local authority whenever the Central Government publishes a declaration in this behalf by a notification under section 3(1). It also enables reduction or removal of any existing taxation whenever the Central Govt. revokes or varies a notification already issued under section 135 of the Railways Act by a notification under section 4. It is thus clear that until a notification of revocation or variation is issued under section 4, a notification already issued under section 135 of the Railways Act will continue to have the same binding force againstthe State-owned Railways as is permitted by the Government of India Act. To the extent that section 135 subjects the State-owned Railways to any particular tax, the machinery to fix an alternative sum in lieu of that tax is the one prescribed by section 135 of the Railways Act and not the one referred to in section 3(2) of the Railways (Local Authorities Taxation) Act. The question whether or not it is appropriate to appoint a Judge instead of a Commissioner for the purposes of section 135 of the Railways Act is entirely administrative.

Sd. P. N. Koos

22/4.

Remembrancer of Legal Affairs.

U.R.to G.D.,No.3477, dated the 23rd April 1942.

MRP.
27/4/56.

R.I.No.4741,
dt. 26-5-42.

Submitted.

2. Please see opinion No.10954, dated 13-12-1940, where the R.L.A. held that the residential quarters of the two peons attached to the Court of the Sub-Judge at Sirsi are exempt from the payment of house-tax under proviso (a) to section 59 of the Bombay District Municipal Act, 1901. The Municipality now contends that as only two out of the four peons attached to the Court are provided with quarters it is clear that provisions of quarters is not a part of the service of the peons; that the peons are provided with quarters because they are required to do watchmen's duty in addition to their ordinary duties; that the quarters were built in 1915 or 1916 because there was some theft in the Court-house and that Govt. get services from those peons for which they do not get any remuneration except free quarters. They further contend that the tax is leviable on these quarters as in the case of peons in the Excise and the Rev. Deptts. (Please see G.R., G.D.,No.6765, dated 14-12-1923). The Commr.,S.D. considers that as the peons do not get extra remuneration for watching, the case is on a par with those of the peons of the Excise and Revenue Deptts. and that this aspect of the case was not probably looked into by the R.L.A. The papers are shown to the R.L.A. with a request to advise whether the contention of the Municipality is tenable in law.

3. In G.R.,G.D. No.6765, dated 14-12-1923

it

it is stated that the rent-free quarters of the peons of the Rev. and Excise Deptts. are built according to a system which brings an economic rent and that they are intended to be used for the purposes of profit within the meaning of the proviso (a) to section 59 of the Bombay District Municipal Act, 1901 and that Govt. inderectly gets a return in smaller wages being paid to the peons on that account. None of these conditions are present in the case of quarters occupied by the two peons of the Court and the R.L.A. has correctly held in his opinion No.10954, dated 13-12-1940 that the house-tax cannot be levied thereon. The present case stands on a different footing from that referred to in the above G.R. When the quarters were built in 1915 or so, it does not appear that they were built with an eye to get an economic rent on them nor could they possibly have been built for profit. Govt. also does not get any indirect return in smaller wages being paid to the peons on account of the rent-free quarters. (Cf. R.L.A's opinion No.O.Munis.Cities 8, dated 19-10-1923). Whether the quarters are occupied for profit depends upon the questions (i) whether the officer or the peon is required to reside in the quarters assigned to him as part of his duty or (ii) whether he is merely permitted for his own convenience to reside in those quarters. In the former case, he is compelled to reside on the premises at all times for performing his futy and performs his duty by that xx act of residence and the residence is solely for a public purpose and not for profit. Ih the latter case, the provision of quarters is a part of the remuneration

for

for the services the officer has to perform and therefore the residence though for a public purpose is for the purpose of profit in as much as the quarter fetches a rent which is part of the remuneration of the officer. In the present case the quarters in question are, it appears, occupied by the two peons of the Court as part of their duty, and the occupation in such a case could not be for profit. (cf. Adv. Genl's opinion No.87 of 1928 conveyed to C.D. in U.R. No.0. Munis Cities 8, dated 22-12-1928). The quarters evidently enable the peons to perform their duty of guarding the court-building and had the quarters not been built, the peons would not have been paid any more than what they are being paid, nor would they have been allowed house-rent allowance. The quarters in this case are used by the peons and the Court certainly makes no profit out of those buildings. The contentions raised by the Municipality are therefore untenable in law. The view expressed in R.L.A's opinion No.10984, dated 13-12-1940, requires no modifications.

Sd. P.S.Nadkarni
15/6.

A.S.

I agree.

Papers may be seen and returned.

The contention of the Sirsi Municipality is not valid. The residence of the two peons in the quarters attached to the Court building being a part of the services which the peons are paid to perform, residence would not be for profit (see Advocate General's

opinion No.87 dated 19-12-1925).
Consequently Government would not be
liable to pay any tax to the Municipality.
G.R., G.D. No.6765 dated 14-12-1923 has
no application to the present case.

Id. R.T.K.
20/6

A.L.R.

I agree.

Reply may be: Seen and returned.
H.L.A. sees no reason to modify his
former opinion on this case.

Id.
20/6.

H.L.A.

Reply may be in terms
of A.S's note.

Id. P.N.'I.
25/6.

MRP.
27/4/56.

30/4 DPP 30-4-56